

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

REF:OCCL:DH

FILE NO.: OA-3278

Acceptance Date: December 30, 2005
180-Day Exp. Date: June 28, 2006

April 13, 2006

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Conservation District Use Application (CDUA) for OA-3278 to Construct Kawai Nui Gateway Park

APPLICANT: Mr. Sam Ustare, Associate, Leo A Daly, American Savings Building, 1357 Kapiolani Boulevard, Suite 1230, Honolulu, Hawaii 96814-4537 for the City and County of Honolulu, Department of Design and Construction, 650 South King Street, Honolulu, Hawaii

LANDOWNER: State Department of Land and Natural Resources and the City and County of Honolulu

LOCATION: Abutting Kawai Nui Marsh, Kailua Town, Koolau-poko District, Island of Oahu

TMK: (1) 4-2-017:020 State Owned
(1) 4-2-016:001 City Owned

PARCEL AREA: Approximately 13.3 Acres

AREA OF USE: Approximately 11.4 Acres

SUBZONE: Protective

PRIOR CONSERVATION DISTRICT USE APPLICATION (CDUA)

On September 12, 2003, the Board of Land and Natural Resources (Board) approved Conservation District Use Application (CDUA) OA-3126B, and was subject to twenty-one terms and conditions (**Exhibit 1**). CDUA OA-3126 expired, as the deadline to initiate construction was not initiated.

DESCRIPTION OF AREA / CURRENT USE:

The proposed Kawai Nui Gateway Park project encompasses two non-contiguous areas, comprised of approximately 13.3 acres of State and County lands on two (2) Tax Map Key's (TMK) (1) 4-2-017:20, and (1) 4-2-016:01, which abut Kawai Nui Marsh, located west of Kailua Town, Koolaupoko District, Oahu. Both TMK's lie within the State Land Use Conservation District, Protective subzone (**Exhibits 2 & 3**).

Historic Sites

Kawai Nui Marsh and its surrounding environment is a significant pre-European and historic area of Hawaiian residence, and is documented in numerous written sources. Since Polynesian settlement, the marsh was valued as an agricultural and fishery resource, where fish, birds, and taro were plentiful. The lands between the marsh and Kailua Bay were popular residential areas, and Kailua was the center of a large royal complex during the 15 and 16th centuries. Before Kamehameha I conquered the island, the Kailua area was considered a place of refuge.

There are numerous references to the productivity of the marsh as a food source, and legend implies even the mud was edible. Other notable legends were: 1) the menehune in the area was credited with building fish ponds and religious structures; 2) Kawai Nui Marsh was inhabited by a dragon-like creature named Hauwahine (a female ruler who ensured that the wealth of the pond was shared, and to punish those who were greedy); 3) based on oral histories, Kailua means "two seas" (which refers to Kawai Nui and Kaelepulu (Enchanted Lake) ponds - the Marsh was considered male, and Kaelepulu Pond female. They mated at Kawailoa, thus giving the area great mana. The ponds joined beneath the lookout point of Puu o Ehu); and 4) many ruling chiefs resided in Kailua: Olopana, Kakuihewa, Kualii (became the high Chief of Oahu), Kahekili and Kamehameha I.

At the time of the Mahele, Kailua, Kaneohe and Waimanalo were considered prime lands and were awarded to royalty in the mid-1800's. The land claimant testimony provides history of the time. A total of 123 house lots were mentioned in the awards, and a few of these are in the vicinity of the proposed project. Agriculture crops included taro, rice, sweet potato, bananas, sugarcane, coconut, and other fruit trees. Rice was the major crop for the 100 years following the Mahele. Fisheries and fishponds are mentioned as land uses in the land claim testimony.

In the 1900's, cattle ranching became the predominant land use. A system of pumps and pipes diverted water from the marsh to Waimanalo, beginning in 1923. In 1909, a copra

enterprise was established in the area between Oneawa and Kalaheo Streets, hence the name Coconut Grove.

No recorded historic properties were identified from the literature review at the project sites. An archeological assessment was conducted for the proposed project, and no surface historic structures were found at either site. However, there is potential for paleoenvironmental deposits at both sites, but only deposits at the Coconut Grove Site are at risk for disturbance¹.

Natural Environment

The 5.1-acre Mokapu Site is located across from Kalaheo High School, and is bounded by Oneawa Canal, Kapaa Quarry Road, Mokapu Boulevard, and a drainage ditch. The 8.2 acre Coconut Grove site is unimproved fast land, and is located south of Kawai Nui Community Park (Kaha Park). It is bounded by Kaelepulu Channel, vacant State lands, and Kaha Park.

Single-Family Residence's (SFR) abut the northern and eastern ends of the Coconut Grove Site, and the eastern end of the Mokapu Site. The Mokapu Site borders Oneawa Canal, and the Coconut Grove Site borders Kaelepulu Channel. The waters are muddy and brackish and discharge into the ocean. Both project banks are overgrown with vegetation.

The Mokapu Site consists of disturbed Jaucus sand and soil deposits. The project site has been extensively disturbed, and the area was used as a construction material dump site, with debris (discarded household materials, abandoned vehicles) at least two (2) meters thick covering the surface. Since then the site has been cleared, and only remnants remain. The project site's existing vegetation consists of scrub vegetation (hale koa, California grass, milo forest), and five (5) to six (6) foot high earthen berms, which are indicative of historical grading at site.

The 8.2-acre Coconut Grove Site consists of unimproved fast land of disturbed calcareous sand deposits, which appear to be natural, but were previously disturbed. According to the archeological assessment, this sand deposit may still contain the remains of traditional Hawaiian land uses (including human burials, other subsurface features related to Hawaiian habitation). Three unlined manmade drainage channels are aligned through the property, in an east-west direction to direct storm water flow from the Coconut Grove Subdivision to Kaelepulu Channel. The site is mostly inaccessible, due to the channels. Existing heavy vegetation consists of California grass, mangrove, and koa haole.

Introduced plants dominate both sites, and no threatened and/or endangered plants were observed. However, endemic and/or endangered waterbirds are present at each site. The

¹ Paleoenvironmental deposits can contain pollen and charcoal evidence identifying when initial settlement of an area begins, as well as identifying later human impacts to the landscape. Such deposits can be of considerable importance to historic preservation concerns.

Mokapu Site had three (3) pairs of endemic and endangered Hawaiian Duck. The Coconut Grove Site had thirteen (13) native Black-crowned Night Herons (roosting in trees, or foraging at the waters edge), 57 Hawaiian Duck, seven (7) endemic Hawaiian Coots (endangered), and fourteen (14) endemic Moorhens (endangered).

Flood Elevation

The proposed project is situated on the edge of a densely vegetated wetland. The Mokapu Site is approximately 11 feet above mean sea level (MSL), and the Coconut Grove Site is between four to six feet above MSL.

Built Environment

Remnant structures at the Mokapu Site consist of construction materials, car parts and chain link fencing. There are no existing structures at the Coconut Grove Site. No utilities exist on either site.

PROPOSED USE:

The applicant proposed to construct the proposed Kawai Nui Gateway Park project for public use. The proposed park consists of two non-contiguous sites, the Mokapu Site and Coconut Grove Site, which will serve to educate visitors and the community about Kawai Nui Marsh's cultural history and significance.

The Mokapu Site was designed for a "nature" experience. The proposed project elements contained the following improvements to create a passive recreational park site: 1) construct a 600 square foot comfort station (with separate outdoor shower); 2) construct an 18,000 square foot parking lot (16 car stalls, 2 bus stalls), and access road (from Mokapu Boulevard); 4) construct a thirty (30) foot in diameter education pavilion; 5) construct sidewalks/pathways; 6) construct a 3,200 square foot open space canoe storage area; 7) install a security gate; 8) install a chain link fence; 9) provide outrigger canoe access into Oneawa Canal; 10) construct a 150 square foot scenic viewing platform; 11) construct a 140 linear foot pedestrian bridge (cross over Oneawa Canal to provide pedestrian access to the Coconut Grove Site); and 12) conduct landscaping features (grassing, berming, plant native trees/shrubs, lava rock walls) (**Exhibit 4**). There will be ground disturbance for sewer, and water lines. Overhead electrical lines will also be installed.

The Coconut Grove Site was designed for a "nature walk" experience, and will contain the following improvements: 1) construct pedestrian nature trail (comprised of 2,000 linear feet of gravel pathways of compacted gravel on sub-grade landscape fabric, two board walk segments consisting of 300 linear feet of treated recycled plastic lumber and handrails, 90 linear feet of footbridges to connect the drainage channels); 2) improve and enhance two (2) acres of wetland (in the northern portion to create a series of small ponds); 3) construct a nineteen (19) foot in diameter observation/nature deck at drainage channel #2; and 4) conduct landscaping features (grass, plant native trees/shrubs) (**Exhibit 5**). No utilities are planned for this site.

Approximately 3.5 acres of grubbing and grading will occur at the Mokapu Site, and approximately four acres of grubbing, grading, and hand clearing will occur at the Coconut Grove Site.

SUMMARY OF COMMENTS:

The Office of Conservation and Coastal Lands (OCCL) requested comments from the following agencies regarding the proposed project: Department of Land and Natural Resources (DLNR) – Division of Forestry and Wildlife (DOFAW), Oahu District Land Agent; Office of Hawaiian Affairs (OHA); City and County of Honolulu – Department of Planning and Permitting, Kailua Public Library, and Kailua Neighborhood Board. The following comments were received:

Division of Forestry and Wildlife

No Comment

Oahu District Land Agent

No Comment

Office of Hawaiian Affairs

OHA appreciate the applicant's plan to use native and endemic vegetation; this will serve a twofold purpose to ensure fewer introductions of alien species into the ecosystem, and provide an accurate sense of place in an area culturally significant and sensitive. Also appreciated is the plan to retain and enhance the northern area wetlands and removal of mangroves and California grass. Should iwi kupuna or native Hawaiian cultural deposits be found during ground disturbance, work should cease and the appropriate agencies contacted.

Kailua Neighborhood Board

Staff notes the Kailua Neighborhood Board commented late and had five issues regarding: 1) exterior lights and Newell Shearwaters; 2) Kalaheo High School issues; 3) site specific information regarding Paleoenvironmental deposit sites review by the HPD; 4) DOT traffic study; and 5) land ownership (**Exhibit 5**).

Applicant Response: Exterior light emission concerns were raised in the FEA; they are not included in this phase of the project. The City and County Department of Parks and Recreation will determine the park's hours of operation, coordinate police patrol, and create park and educational programs (with the input of the Kailua Neighborhood Board). The General Contractor will stop work and contact HPD if any paleoenvironmental deposits are found.

Staff Note: CDUA OA-3126 terms and conditions addressed each issues raised by the Kailua Neighborhood Board: Condition # 7 specifically addresses lighting issues to protect the Neal Shearwaters. Condition # 14 addresses the issues regarding Kalaheo High School's student safety. As for increased police patrols, creation of a community watch group, student government participation, and education of Kawai Nui Marsh are

outside the scope of the CDUA, and is up to the community, purview of FOFAW, and Kalaheo High School. Condition # 4 explicitly deals with potential for the inadvertent discovery of human remains during construction, and the potential to disturb paleoenvironmental deposits at the Coconut Grove Site. However, staff notes at present, nothing has been given to the HPD to review. Condition # 10 deals with a request for Department of Transportation (DOT) to conduct a traffic study. However, staff notes the burden is on the City to submit a traffic study before the DOT considers proposals to modify the intersection of Mokapu Boulevard and Kapaa Quarry Road.

The Oahu District Land Office has confirmed TMK: (1) 4-2-17:20 was acquired by the State through condemnation action² (LOD 27885), the parcel is under EO 4102 to the Division of State Parks. Currently, TMK: (1) 4-2-16:1 is still under ownership of the County

ANALYSIS:

Following review and acceptance for processing, the applicant was notified by letter, dated March 27, 2003 that:

1. The proposed use is an identified land use in the Protective subzone of the Conservation District, according to Section 13-5-22, Hawaii Administrative Rules (HAR), P-6, PUBLIC PURPOSE USES, D-1, "land uses undertaken by the State of Hawaii or Counties to fulfill a mandated government function, activity, or service for public benefit and in accordance with public policy and the purpose of the conservation district," please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to Section 13-5-40(3), HAR, HEARINGS, a hearing is not required on applications requiring a board permit in the protective subzone³; and
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, the Draft Environmental Assessment (DEA) was published in OEQC's Environmental Notice on June 23, 2003, and the City and County of Honolulu, Department of Design and Construction was the accepting authority of the Final Environmental Assessment (FEA) (October 2002).

The City's Department of Design and Construction issued a Finding of No Significant Impact (FONSI) statement. The OCCL noticed CDUA OA-3278 and the FEA in OEQC's January 23, 2006 Environmental Notice.

² The parcel was acquired for the preservation and protection of Kawainui Marsh, as part of the Kawai Nui Marsh Resource Management Plan.

³ A Public Hearing was held for the prior CDUA OA-3126 on Tuesday, May 13, 2003, at the Kailua Regional Wastewater Treatment Plant, Kailua, Oahu.

13-5-30 CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Staff is of the opinion that the proposed action will increase structural density on two vacant parcels, however the action is consistent with the purpose of the Conservation District. The area's natural resources will be preserved and potential impacts will be minimized, with mitigation measures.

Staff is of the opinion that the proposed project will enhance and expand opportunities for the public by improving visitors experiences to the marsh by; improving scenic viewplanes to the marsh; enhancing the public's awareness of the marsh's cultural, historical and archeological experiences; facilitating wetland ecosystem education and research opportunities; improving endangered species habitats; and providing low impact access for wildlife observations.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the Protective subzone is to protect valuable resources in designated areas such as restricted water-sheds, marine, plant, and wildlife sanctuaries, significant historic, archeological, geological, and volcanological features and sites, and other designated unique areas.

Staff notes that although the Protective subzone is the most restrictive regarding land use development(s), the proposed project will be beneficial to the public, and to the protected natural resources of the marsh. Staff notes the proposed project is located on the urban fringe of Kailua Town. The proposed project will therefore serve as a buffer between the urban fringe and the natural resources of Kawai Nui Marsh. Staff feels that the proposed project's improvements within the Protective subzone are warranted because the park will serve as an educational resource to highlight the importance of wetlands conservation and protection within the actual marsh. In addition, although the subject land has been zoned "Protective," it has been disturbed in the past.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The Council of the City and County of Honolulu, issued Resolution 02-339 for a Special Management Area (SMA) Permit at its meeting on January 29, 2003.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff is of the opinion that impacts have been adequately mitigated, therefore the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed structures can fit into the locality and surrounding areas, with appropriate mitigation measures and without significant or deleterious effects to the locality, surrounding area and parcels

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

The proposed project is situated along Kawai Nui Marsh (which collects floodwaters), and along Oneawa Canal (a drainage canal), and is therefore subject to flooding. However, the applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The proposed project is intended to blend in visually with the surrounding area. Lastly, the subject parcel will be landscaped to minimize visual impacts to and from Kawai Nui Marsh and Oneawa Canal, and its' public users.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

DISCUSSION:

The proposed use is an identified land use in the Protective subzone of the Conservation District, according to Section 13-5-22, Hawaii Administrative Rules (HAR), P-6, PUBLIC PURPOSE USES, D-1, "land uses undertaken by the State of Hawaii or Counties to fulfill a mandated government function, activity, or service for public benefit and in accordance with public policy and the purpose of the conservation district."

As noted in the criteria section, staff notes the Protective subzone is the most restrictive regarding land use development(s), however the proposed project is beneficial to the public. The proposed project will: 1) improve the quality of experience for marsh visitors; 2) improve scenic viewplanes to the marsh; 3) enhance public awareness of the marsh's significant natural and cultural resources; 4) facilitate wetland ecosystem education and research (data collection); 5) improve endangered species habitats; 6) provide low-impact access for wildlife observatories; and 7) provide additional parking for marsh visitors on the fringe, not within the actual marsh. Lastly, staff notes the proposed project will serve as a buffer between the urban fringe and the natural resources of Kawai Nui Marsh, will serve as a transition zone from an urban area to a wilderness area, and will therefore have less of an impact on the natural resources of the marsh.

In most cases, land uses permitted by the Board of Land and Natural Resources, in the Protective subzone would range from no development to habitat restoration protection. However, staff has considered the merits of the case, including its' overall general purpose, the degraded condition of the two parcels, and the lack of community opposition, and believes that the project will result in an improvement of the protected lands and will benefit the natural resources of the marsh and the public.

Staff notes due to the lack of funds, the applicant proposes to develop and construct in two phases only specific elements of the Mokapu Site as a priority: Phase I - conduct landscaping features (grassing, berming, plant native trees/shrubs, lava rock walls); install a security gate; and install a chain link fence. Phase II - construct sidewalks/pathways only along the parking lot; construct an 18,000 square foot parking lot (16 car stalls, 2 bus stalls), and access road from Mokapu Boulevard. The Mokapu Site and Coconut Grove Site project elements are not economically feasible at this time. Completion of the proposed park will depend on future funding.

Staff notes the plans for the various land use designs (education pavilion, pedestrian bridge, comfort station, observation decks) and the landscaping plan are only conceptual at this time, and that final plans have yet to be drawn up. Due to limited funding, this process may take years. Therefore, staff notes that when final construction plans have been finalized, they should be submitted to the OCCL for approval, prior to construction.

Lastly, staff notes the applicant was asked respond to the: 1) identity and scope of valued cultural, historical and natural resource in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area; and 2) to the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action.

The applicant noted the proposed project was designed to avoid any adverse impacts to cultural resources. The cumulative impacts from existing and proposed projects in the vicinity are expected to enhance the Kailua community, by attracting residents and visitors to the natural beauty of the resource, while preserving and benefiting from Kawai Nui Marsh's flora and fauna.

Staff notes all terms and conditions should remain in effect. However, staff recommends because funds are not available and construction may not be initiated within one year, that the time to initiate construction should be changed to five years, and the time to finish construction should be completed within ten years.

Staff therefore recommends;

RECOMMENDATION:

Based on the proceeding analysis, staff recommends that the Board of Land and Natural Resources (Board) APPROVE this application to construct the Kawai Nui Gateway Park, subject to the following terms and conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) Any work done on the land shall be initiated within five (5) years of the approval of such use (from the date of the Board's action), and unless otherwise authorized, be completed within ten (10) years of the approval (from the date of the Board's action). The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 4) Prior to carrying out any ground disturbance, the applicant shall ensure that a qualified archeologist conduct an archeological inventory survey with subsurface testing within the Coconut Grove Site. A report of the findings shall be provided to HPD for review and approval. If significant historic sites are found, and if they will be adversely affected by the proposed park development, then an acceptable mitigation plan will need to be prepared and executed prior to any ground disturbance;
- 5) If more detailed information (i.e. site plans) indicate that the two areas with potential for containing paleoenvironmental deposits will be adversely affected by the planned park development, then the applicant shall ensure that these areas are

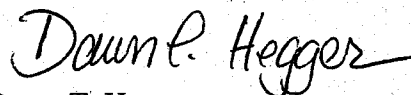
- appropriately investigated during any archeological inventory survey work, and that the findings are included in a report of findings to HPD;
- 6) The applicant will work with DOFAW to finalize the site plans for the Coconut Grove site, to include but not be limited to the wetland enhancement area. The applicant will retain a minimum seven (7) foot buffer zone on the channel and all the drainage ditches;
 - 7) The applicant will minimize visual impacts to Oneawa Canal, Kawai Nui Marsh, to the surrounding Single Family Residences, and its public users by using appropriate lighting, building and color schemes, and landscaping. Lighting shall be restricted to the comfort station, and be directed downward and not toward Oneawa Canal, Kawai Nui Marsh, or adjacent homes. Consideration shall be given to minimizing the exposure to Kawai Nui Marsh and adjacent residences to road noise and car lights. The Office of Conservation and Coastal Lands, prior to work being undertaken on the proposed project; shall approve lighting, color scheme, and landscaping, prior to construction;
 - 8) The applicant will consult with OCCL staff regarding the type of appropriate screening materials to be used to screen Kawai Nui Gateway Park from the adjacent residences;
 - 9) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the final construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
 - 10) The applicant, prior to construction, shall consult with the Department of Transportation, Highways Division for access driveway work for approval; after approval the applicant shall submit a copy of the construction plans with DOT's approval to the OCCL, prior to construction;
 - 11) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
 - 12) The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project

site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly.

- 13) Stockpiles of soil shall be covered at all times. The site shall be stabilized and vegetated within thirty (30) days after grading is completed. Landscaping shall be irrigated and weeded for a minimum of one full year after planting to insure that plants are healthy and established. Unhealthy plants shall be replaced (and maintained);
- 14) The City and County of Honolulu (City), upon receiving the transfer of the property and responsibility for the operations and maintenance, will implement the following restrictions and display corresponding signage:
 - a) Use of the Kawai Nui Gateway Park and it's restrooms shall be limited to the hours of 7:00 AM to 7:00 PM. Access to the park shall be prohibited after these hours. The City shall ensure that the park is adequately gated and the restrooms locked to prevent access after hours;
 - b) Vehicles left in within Kawai Nui Park shall be towed;
 - c) Consumption of alcoholic beverages are prohibited;
 - d) Overnight camping is prohibited;
 - e) Use of all motorized vehicles, boats, and airplanes shall be prohibited;
 - f) Organized sports, other than canoe paddling, shall be prohibited;
 - g) Dogs shall be required to be on a leash at all times. Owners must bag and dispose of pet waste;
 - h) Feeding feral cats is prohibited;
 - i) Feeding of ducks or other wildlife is prohibited;
 - j) Use of firearms shall be prohibited;
 - k) Graffiti is prohibited and perpetrators will be prosecuted;
- 15) All utility lines (electrical, telephone) shall be placed underground;
- 16) The 140 linear foot pedestrian bridge, which crosses over Oneawa Canal to connect the Mokapu Site to the Coconut Grove Site, will be gated at both ends of the bridge. The gates will be locked at 7:00 PM and unlocked at 7:00 AM;

- 17) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 18) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 19) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary.
- 20) Other terms and conditions as may be prescribed by the Chairperson; and
- 21) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

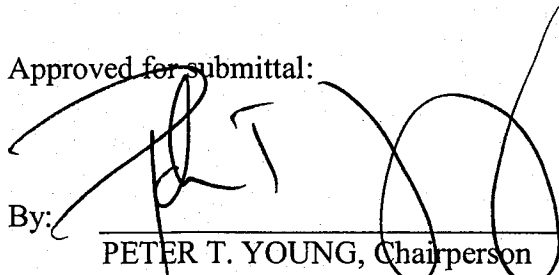
Respectfully submitted,



Dawn T. Hegger
Staff Planner

Approved for submittal:

By:



PETER T. YOUNG, Chairperson
Department of Land and Natural Resources

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

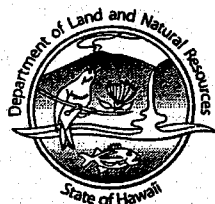
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COMMISSION ON WATER RESOURCE MANAGEMENT

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DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



REF:OCCL:DH

FILE NO.: OA-3126

Tim Steinberger, Director
City and County of Honolulu
Department of Design and Construction
650 South King Street,
Honolulu, Hawaii 96813

OCT 16 2003

Dear Mr. Steinberger,

This letter is to inform you that on behalf of your consultants, Helber Hastert and Fee, Conservation District Use Application (CDUA) OA-3126B was approved by the Board of Land and Natural Resources on September 12, 2003.

The City and County of Honolulu, Department of Design and Construction is authorized to construct Kawai Nui Gateway Park's Mokapu Site and Coconut Grove Site, which abuts Kawai Nui Marsh, Kailua Town, Koolaupoko District, Island of Oahu, TMK's: (1) 4-2-017:020 and 4-2-016:001. This authorization is subject to the following conditions and terms:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) Any work done on the land shall be initiated within one year of the approval of such use (from the date of the Board's action), and unless otherwise authorized, be completed within three (3) years of the approval (from the date of the Board's action). The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 4) Prior to carrying out any ground disturbance, the applicant shall ensure that a qualified archeologist conduct an archeological inventory survey

EXHIBIT 1

with subsurface testing within the Coconut Grove Site. A report of the findings shall be provided to HPD for review and approval. If significant historic sites are found, and if they will be adversely affected by the proposed park development, then an acceptable mitigation plan will need to be prepared and executed prior to any ground disturbance;

- 5) If more detailed information (i.e. site plans) indicate that the two areas with potential for containing paleoenvironmental deposits will be adversely affected by the planned park development, then the applicant shall ensure that these areas are appropriately investigated during any archeological inventory survey work, and that the findings are included in a report of findings to HPD;
- 6) The applicant will work with DOFAW to finalize the site plans for the Coconut Grove site, to include but not be limited to the wetland enhancement area. The applicant will retain a minimum seven (7) foot buffer zone on the channel and all the drainage ditches;
- 7) The applicant will minimize visual impacts to Oneawa Canal, Kawai Nui Marsh, to the surrounding Single Family Residences, and its public users by using appropriate lighting, building and color schemes, and landscaping. Lighting shall be restricted to the comfort station, and be directed downward and not toward Oneawa Canal, Kawai Nui Marsh, or adjacent homes. Consideration shall be given to minimizing the exposure to Kawai Nui Marsh and adjacent residences to road noise and car lights. The Office of Conservation and Coastal Lands, prior to work being undertaken on the proposed project; shall approve lighting, color scheme, and landscaping, prior to construction;
- 8) The applicant will consult with OCCL staff regarding the type of appropriate screening materials to be used to screen Kawai Nui Gateway Park from the adjacent residences;
- 9) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the final construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 10) The applicant, prior to construction, shall consult with the Department of Transportation, Highways Division for access driveway work for approval; after approval the applicant shall submit a copy of the construction plans with DOT's approval to the OCCL, prior to construction;

- 11) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
- 12) The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly.
- 13) Stockpiles of soil shall be covered at all times. The site shall be stabilized and vegetated within thirty (30) days after grading is completed. Landscaping shall be irrigated and weeded for a minimum of one full year after planting to insure that plants are healthy and established. Unhealthy plants shall be replaced (and maintained);
- 14) The City and County of Honolulu (City), upon receiving the transfer of the property and responsibility for the operations and maintenance, will implement the following restrictions and display corresponding signage:
 - a) Use of the Kawai Nui Gateway Park and its restrooms shall be limited to the hours of 7:00 AM to 7:00 PM. Access to the park shall be prohibited after these hours. The City shall ensure that the park is adequately gated and the restrooms locked to prevent access after hours;
 - b) Vehicles left in within Kawai Nui Park shall be towed;
 - c) Consumption of alcoholic beverages are prohibited;
 - d) Overnight camping is prohibited;
 - e) Use of all motorized vehicles, boats, and airplanes shall be prohibited;
 - f) Organized sports, other than canoe paddling, shall be prohibited;
 - g) Dogs shall be required to be on a leash at all times. Owners must bag and dispose of pet waste;
 - h) Feeding feral cats is prohibited;

- i) Feeding of ducks or other wildlife is prohibited;
 - j) Use of firearms shall be prohibited;
 - k) Graffiti is prohibited and perpetrators will be prosecuted;
- 15) All utility lines (electrical, telephone) shall be placed underground;
 - 16) The 140 linear foot pedestrian bridge, which crosses over Oneawa Canal to connect the Mokapu Site to the Coconut Grove Site, will be gated at both ends of the bridge. The gates will be locked at 7:00 PM and unlocked at 7:00 AM;
 - 17) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
 - 18) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
 - 19) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary.
 - 20) Other terms and conditions as may be prescribed by the Chairperson; and
 - 21) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Please acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the Office of Conservation and Coastal Lands within thirty (30) days.

If you have any questions regarding this matter please contact Dawn Hegger of our Office of Conservation and Coastal Lands at 587-0380.

Sincerely,

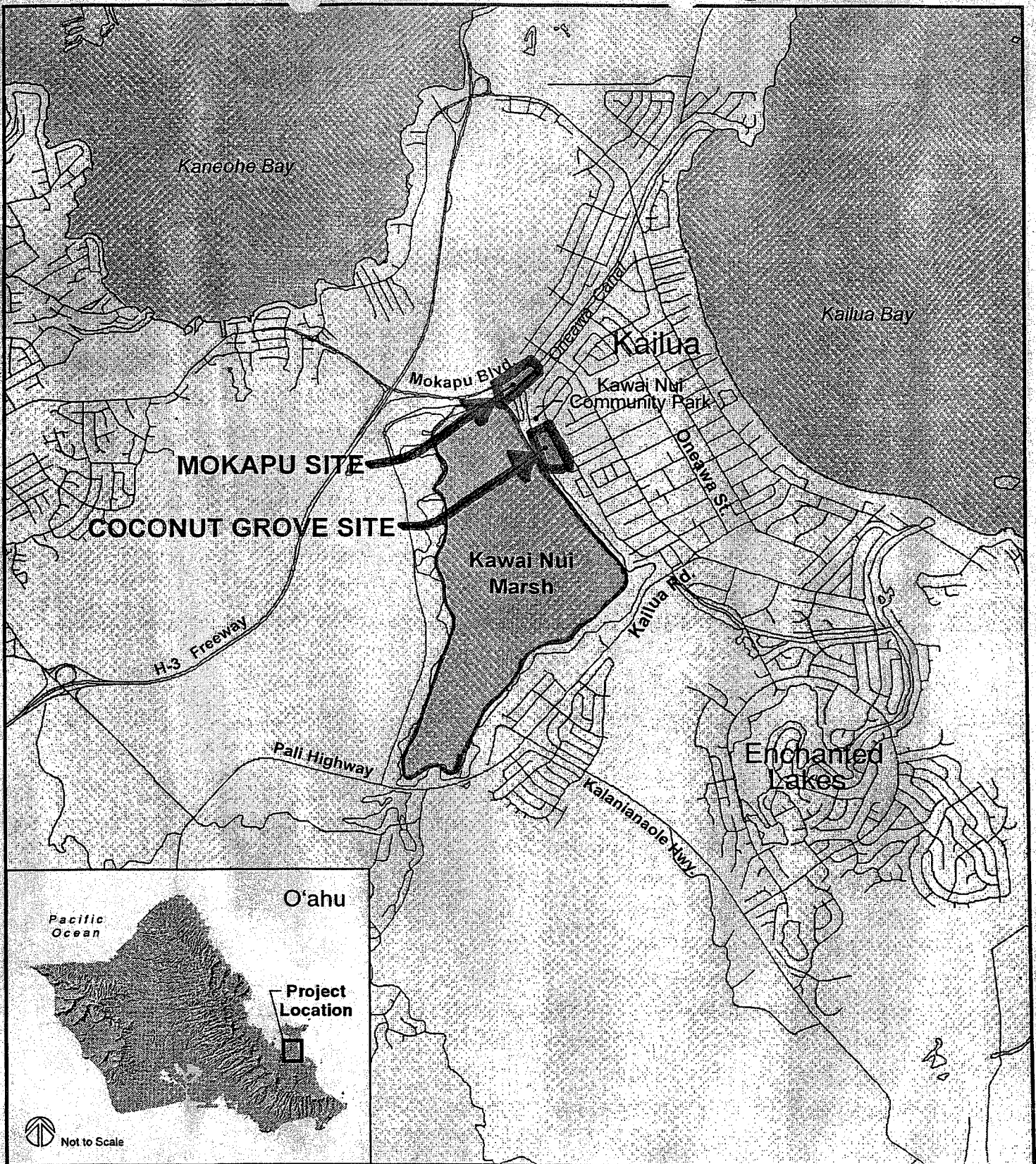


Dierdre S. Mamiya, Acting Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged: _____

Date: _____

Cc: Oahu Board Member
Oahu District Land Agent
City and County of Honolulu
Department of Planning and Permitting
Fire Department
Police Department
Army Corps of Engineers
Kailua Neighborhood Board
Coconut Grove Community Association



LOCATION MAP

Kawai Nui Gateway Park
Kailua, Ko'olaupoko, O'ahu



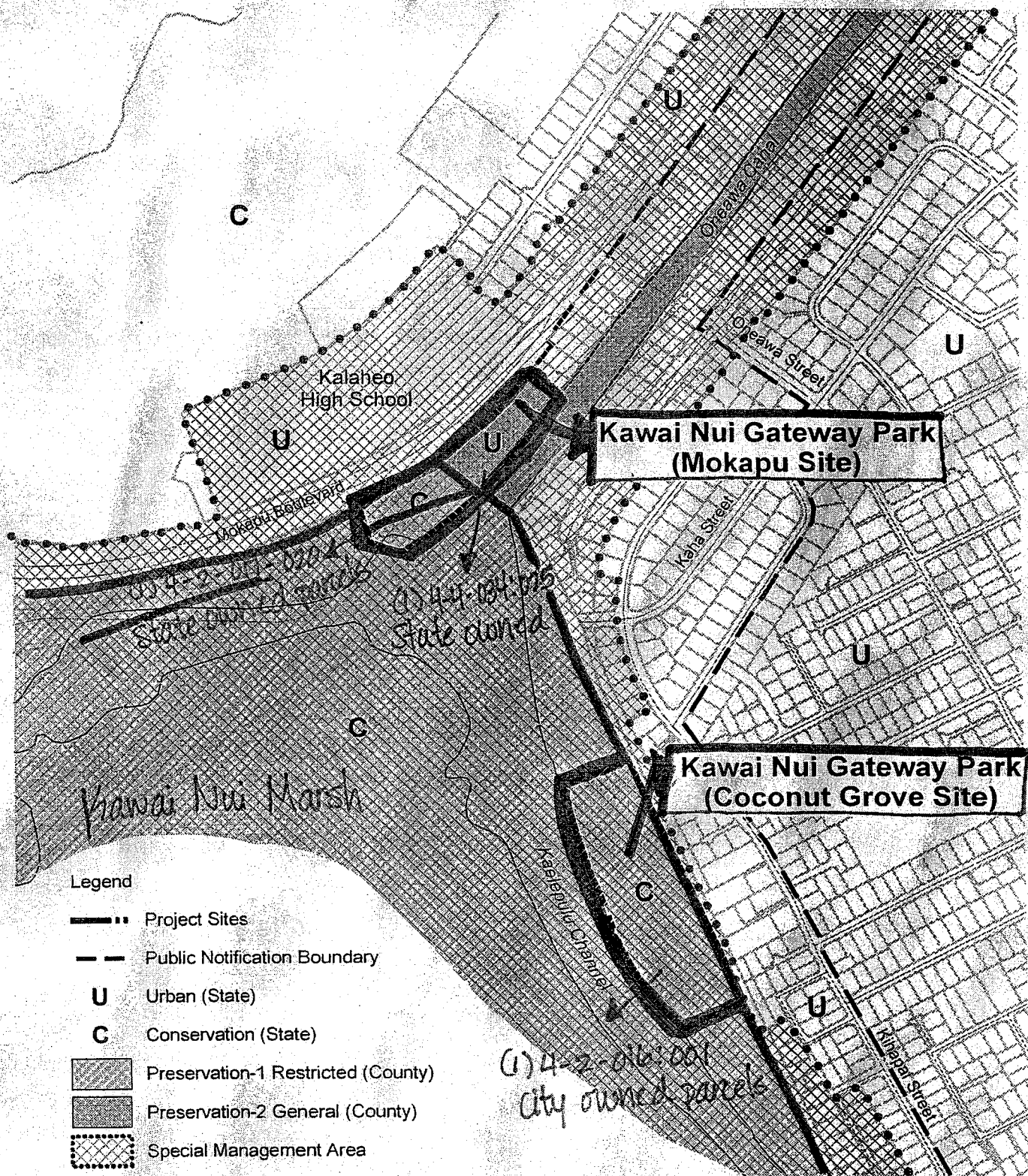
Helber Hastert & Fee
PLANNERS



0 Feet 3000
0 Meters 900

Figure

1





STUDY AREA

Kawai Nui Gateway Park
Kailua, Ko'olaupoko, O'ahu



Helber Hastert & Fee
PLANNERS



0 Feet 400
0 Meters 120

Figure

2

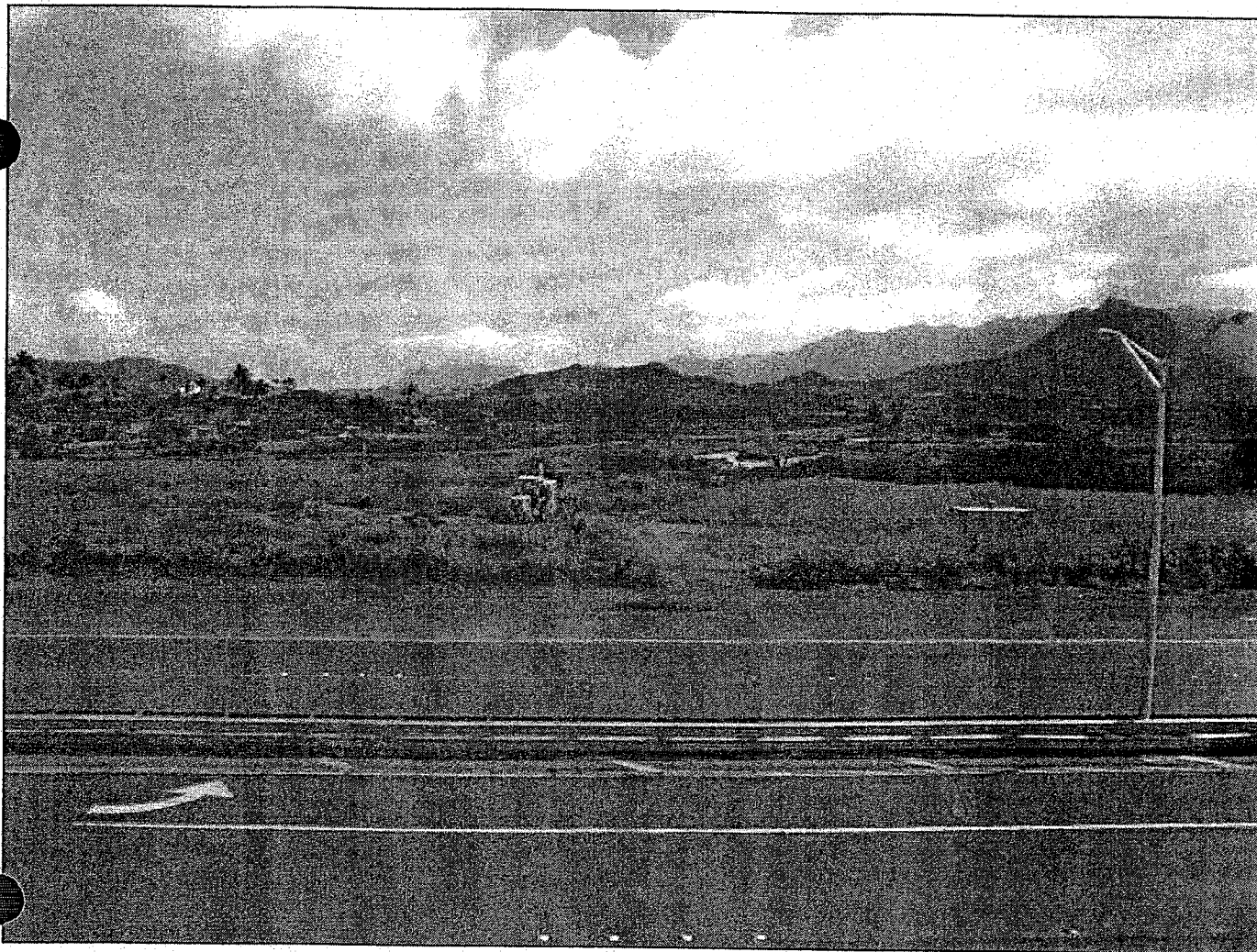


Photo 1: Mokapu Site-western boundary. View South from Kalaheo High School.

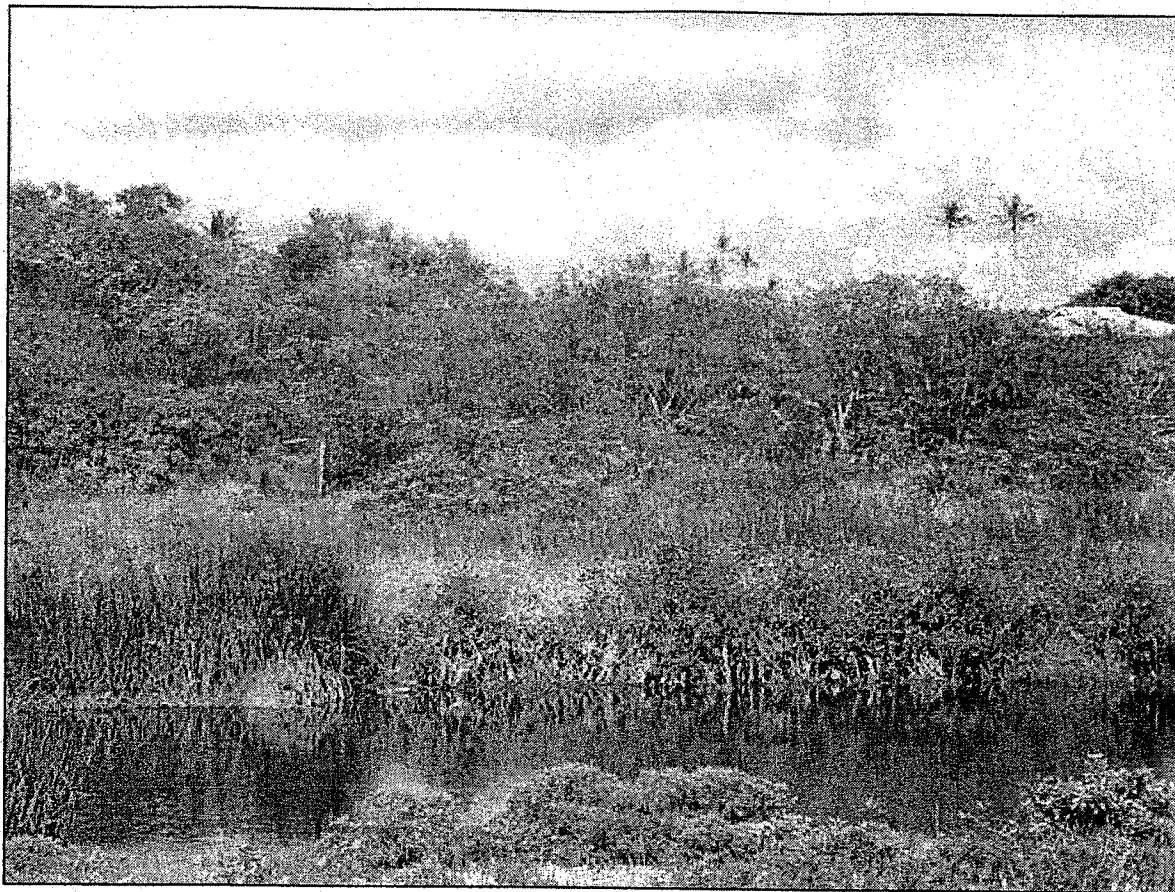
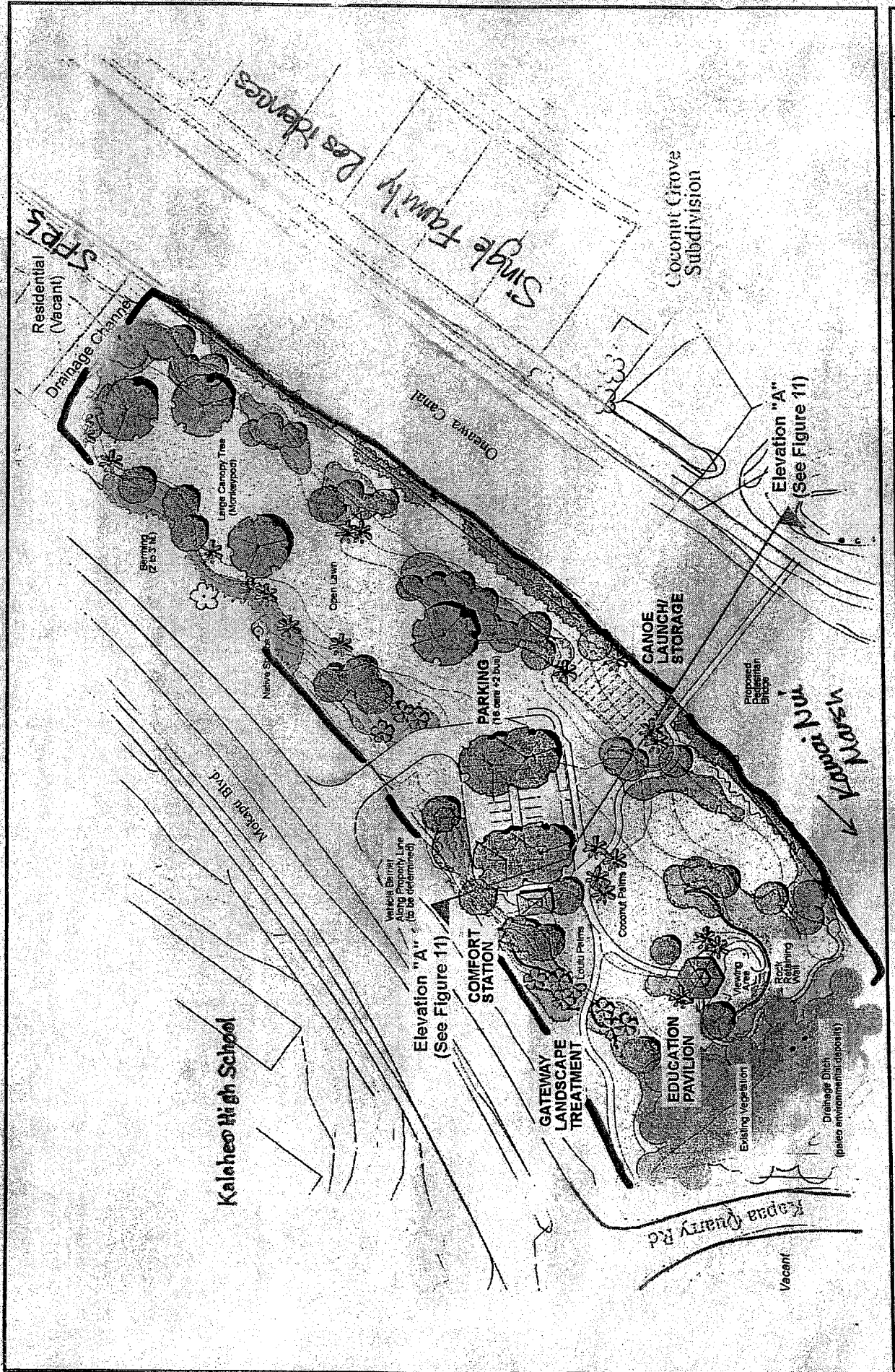
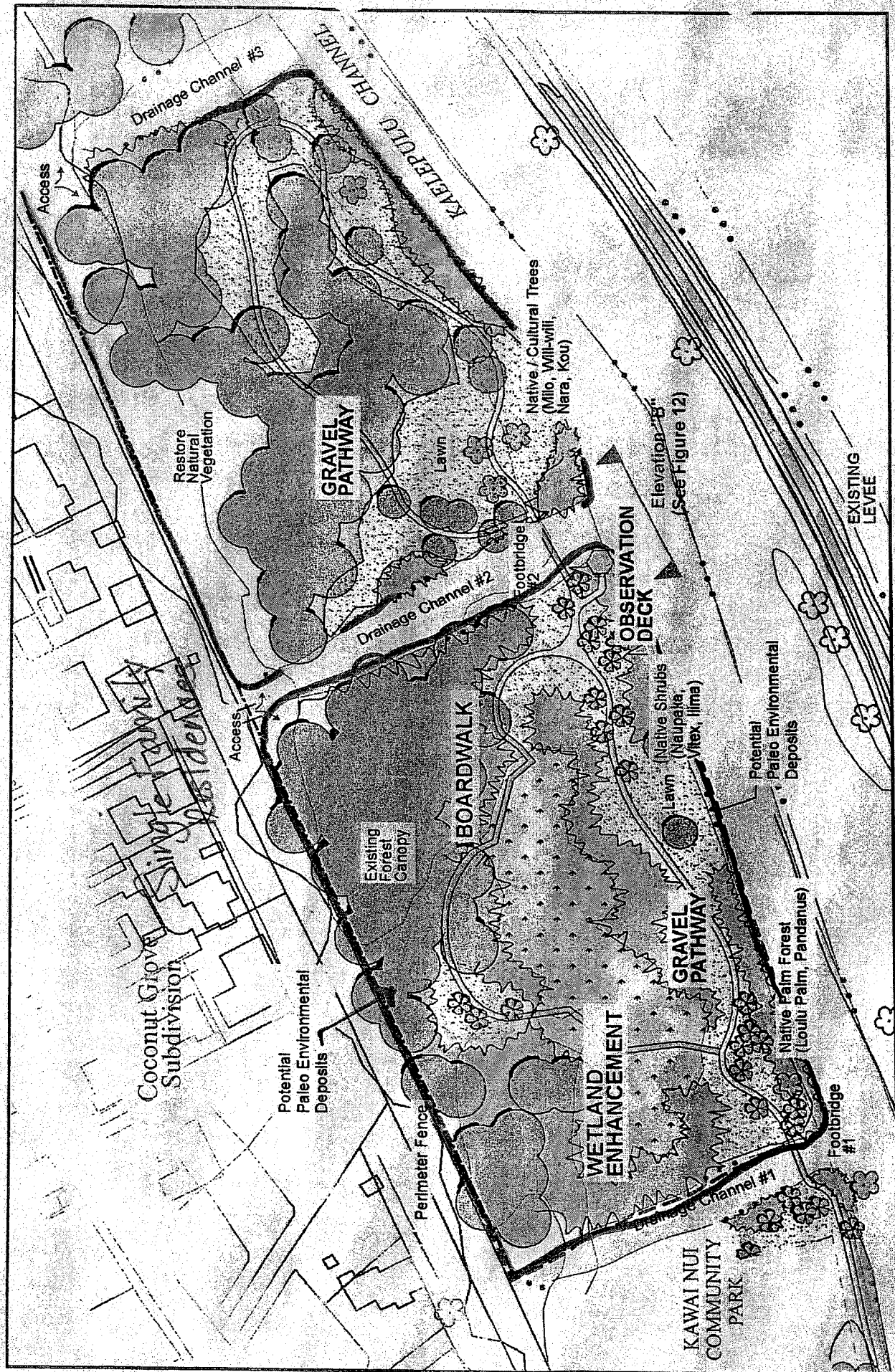


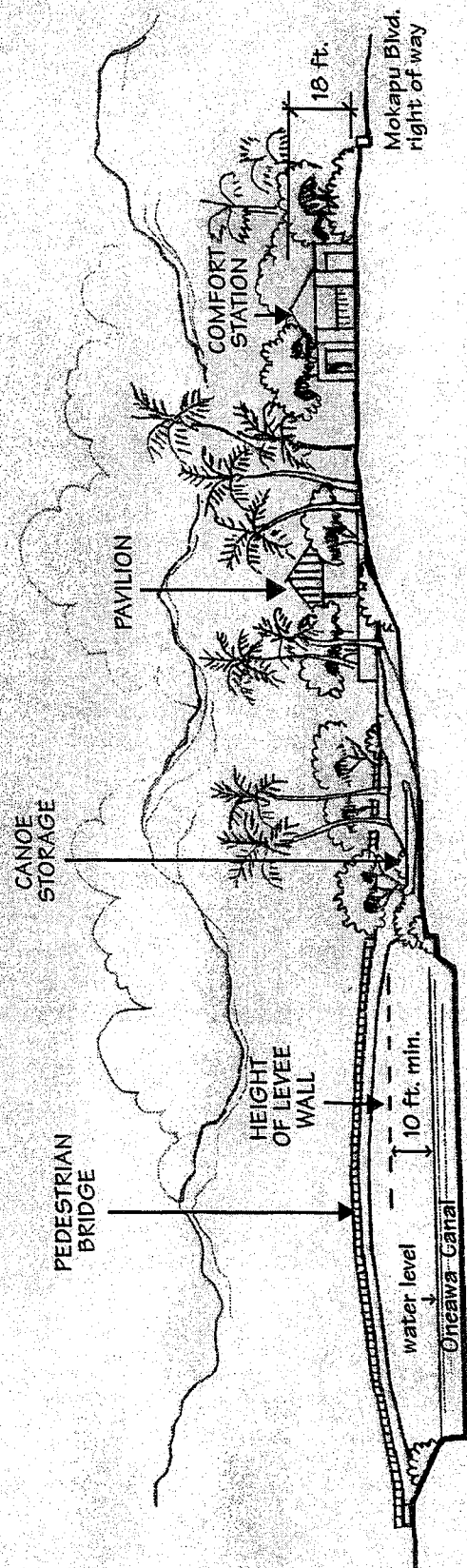
Photo 7: Coconut Grove Site. View East from flood control levee.

Mokapu Site



Coconut Grove Site



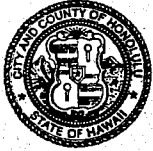


ELEVATION "A" - MOKAPU SITE WEST VIEW

Kawai Nui Gateway Park
 Kailua, Ko'olaupoko, O'ahu
 Helber Haertel & Fee
 PLANNERS



Figure
 11



KAILUA NEIGHBORHOOD BOARD NO. 31

P.O. BOX 487 • KAILUA, HAWAII 96734
PHONE (808) 527-5749 • FAX (808) 527-5760 • INTERNET: <http://www.honolulu.gov>

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AND COASTAL LANDS
2006 MAR -9 P 4: 14
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

March 7, 2006

Peter Young, Chair
Board of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai'i 96809

Dear Chair and Board members:

RE: Kawai Nui Gateway Park Conservation District Use Application
Request for Time Extension (October 26, 2005).

At the March 2, 2006 meeting the Kailua Neighborhood Board passed the following motion:

The Kailua Neighborhood Board opposes a CDUA time extension for Kawai Nui Gateway Park because the following conditions are either not resolved or included.

The following are concerns expressed in response letters from the DOE, DLNR Forestry and Wildlife, DLNR Historic Preservation Division and DOT to the Draft Environmental Assessment:

1. The Department of Land and Natural Resources (DLNR) requested that all exterior lights were requested to be low sodium with shielded light fixtures to direct the illumination toward the ground to protect young Newell Shearwaters just learning to fly at night.
2. Adoption of Kalaheo High School's suggestions for students safety: 1) the new park will be an attractive nuisance so should not be opened before 8:00 am on school days (included in FEA), 2) increased police patrols along Mokapu Blvd. to act as a deterrent, 3) creation of a community watch group, 4) student government participation in future park and Marsh discussions, and 5) education of Kalaheo students about the value of the Marsh and the sensitivity of waterbeds to noise.
3. Confirmation that the requested site-specific information on the actions proposed for the two potential Paleoenvironmental deposit sites has been given to the Historic Preservation Division, reviewed and acted upon. (Paleoenvironmental deposits can contain pollen and charcoal evidence identifying when initial

EXHIBIT 5



settlement of an area begins, as well as identifying later human impacts to the landscape. Such deposits can be of considerable importance to historic preservation concerns.)

4. Because of various traffic concerns a condition for a CDUA time extension should be that DOT conduct a traffic study to asses: 1) the feasibility of permitting a U-turn at the Mokapu/Kapaa Quarry Road intersection, 2) impact of a modified signal on existing traffic, 3) if trucks towing canoes can safely make a U-turn going mauka on Mokapu to Makai on Mokapu, 4) likely impacts on intersection level of service due to need for an additional signal phase, 5) whether it will be necessary to extend existing left-tern storage lanes, 6) that plans for work within the State highway right-of-way be submitted to DOT highways division traffic branch for review and approval and 7) the inclusion of Kalaheo High School representatives in all discussions regarding Mokapu Blvd. and Kapaa Quarry Road signal.
5. *Land ownership.* A 10/4/02 letter to DLNR Land Division-Engineering Branch from David Curry, Helber Hastert & Fee dated states "Both the Mokapu and Coconut Grove sites will be managed as a County Park. The land ownership and park management issues are unresolved, and the park will not be developed until these issues are resolved. The Final EA states these issues as unresolved".

Regarding land ownership, the Board is concerned that this issue could drag on for years requiring continuous requests for time extensions. We do not think this is the most efficient and community friendly way to plan for new public facilities.

It is the Board's understanding that if a time extension is not granted no money will be lost since no bonds or other funds have been allocated, at this time, for construction of this project.

If you have any questions please contact me at 261-8292.

Sincerely,



Donna Wong, Chair
Planning, Zoning and Environment Committee